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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,365	03/09/2004	Roger Dean Neitzell	066042-9276-04	2254
23409	7590	02/06/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,365

Applicant(s)

NEITZELL ET AL.

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Detailed Action

The amendment filed on 11-16-2005 has been entered.

Claims Rejection

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 10, 12-19, 21 and 23-26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alsruhe (U.S. Patent No. 6,102,134).

Alsruhe discloses a power tool (10) comprising a body (12); a motor (18); a drive mechanism (20); a hand grip (14); a switch assembly or trigger (28); a wiring arrangement (see Figs.4 and 5, unnumbered); a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48); an

actuator (70); means (80) for biasing the locking mechanism toward a locked condition as claimed. Although, Alsrue shows a first position in which the body (12) and the hand grip (14) are generally aligned (see Fig.4) and a second position in which the body (12) and the hand grip (14) are at an obtuse angle (see Fig.6). Alsrue does suggest more recesses (46,48) can be added to lock the body (12) and the hand grip (14) in additional positions with respect to each other (see column 3, lines 62-65). It is inherent or would be obvious that additional positions such a "generally perpendicular" is or can be included.

3. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alsrue (U.S. Patent No. 6,102,134) in view of Yang (U.S. Patent No. 4,976,173).

Alsrue's power tool as set forth shows all the claimed structure except the power tool is powered by a battery rather than an external energy.

However, it is well known in the power tool art to use external energy as an energy source for the power tool by means of a power cord as evidenced by Yang (see column 3, lines 40-42).

Therefore, it would have been obvious to one skilled in the art at the time this invention was made to power Alsrue's tool by an external energy by means of a power cord as is well known in the art.

4. Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Alsrue (U.S. Patent No. 6,102,134).

Kikuchi et al. show a reciprocating saw comprising a housing (14) having a body and a hand grip integrally formed with the body; the body housing a motor (44) and a drive mechanism (16); the hand grip containing a battery (38); a reciprocating spindle (21) for supporting a tool element (i.e. saw blade 46); the drive mechanism (16) being operably connected to the spindle (21) for causing reciprocating of the spindle (21) substantially as claimed except the body and the hand grip are of one single piece (14) and therefore not adjustable with respect to each other.

Alsrue teaches that it is desirable to provide a power tool with an adjustable housing so that the length of the housing is adjustable to accommodate a user's particular task. This adjustment can be accomplished by making a one single housing into two pieces namely a body (for housing a motor and a drive mechanism) and a hand grip (to be gripped by a user) and adjustably connecting the hand grip (14) to a rearward end of the body (12) for movement relative to the body (12) between a plurality of positions.

Therefore, it would have been obvious to one skilled in the art to modify Kikuchi et al. by having the one piece housing formed of two separated pieces, namely a body and a hand grip and adjustably connecting the two pieces together so that they are angularly adjustable in a plurality of positions to facilitate the use of the power tool in a confined working area as taught by Alsrue.

Remarks

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for official communications and 571-273-4511 for proposed amendments.

H Payer
February 2, 2006

H-S Payer

Hwei-Siu Payer
Primary Examiner